

SETTLEMENT AGREEMENT

This Agreement is entered into this 25 day of MARCH, 2009

between the NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF COASTAL MANAGEMENT ("DCM") and THE TOWN OF SOUTHERN SHORES ("Town").

RECITALS

There is pending before the Office of Administrative Hearings a Contested Case Petition filed by the Town in File No. 08-EHR-0621 ("the Litigation") in which the Town has appealed from a decision of DCM denying the Town a major permit for maintenance dredging of a portion of the Town's canal system and Jean Guite Creek;

At a mediation on December 16, 2008 the parties reached an agreement by which the Town would submit an amended plat and plan showing reduction in impacts on submerged aquatic vegetation and primary nursery areas;

The parties' Mediated Settlement Agreement also provides that DCM would render a decision by February 27, 2009 on the amended plan and proposals submitted by the Town;

DCM has decided to issue a permit based upon the amended plan and proposal submitted by the Town, but such permit cannot be issued unless and until the Town withdraws the Petition and dismisses the Litigation and submits a satisfactory spoil disposal area and plan;

The parties agree to resolve all matters in controversy between them on the terms set forth below.

NOW, THEREFORE, it is AGREED as follows:

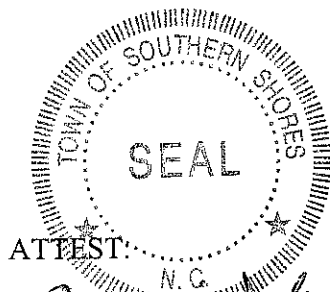
1. The Town will dismiss the Contested Case Petition pending in the Litigation as soon as this Agreement is fully signed.

2. The Town will submit a plan for the placement of spoils generated by the dredging project. The Town's proposed spoil disposal plan shall be in compliance with 15A N.C.A.C. 7H.0208(b)(2).

3. Promptly upon the submission of the Town's spoil disposal plan, DCM shall issue a permit to allow the canal maintenance dredging project on the terms set forth in the "draft" permit attached hereto as Exhibit 1.

4. Both parties shall bear their own costs and fees associated with the Litigation.

This the 25th day of March, 2009.



ATTEST:

Carrie Gordin
Carrie Gordin, Town Clerk

TOWN OF SOUTHERN SHORES,
PETITIONER

BY:

Donel Smith
Donel Smith, Town Mayor

APPROVED:

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

BY:

John D. Leidy
John D. Leidy
Attorneys for Petitioner

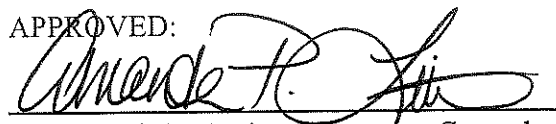
NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT & NATURAL
RESOURCES, DIVISION OF COASTAL
MANAGEMENT

BY:

James H. Gregson
James H. Gregson, Director

[Signature continue on next page]

APPROVED:



Amanda Little, Assistant Attorney General

This instrument has been preaudited in the
Manner required by the Local Government
Budgets and Fiscal Control Act.



Bonnie Swain, Finance & Personnel Officer

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NOTE: This permit is being issued in accordance with the March 7, 2009 Settlement Agreement between the Division of Coastal Management and the permittee.

- 2) The permittee shall develop, in coordination with the Division of Coastal Management, Wildlife Resources Commission, and the Division of Marine Fisheries, a Submerged Aquatic Vegetation (SAV) management plan. The implementation of this plan shall be the responsibility of the permittee. This plan shall be submitted to the Division within 60 days of the completion of the authorized maintenance activities.

Maintenance Excavation

- 3) Unless specifically altered herein, the authorized depths of excavation shall adhere to the limits indicated on the attached workplan drawing dated 12/29/08. Overdredging is specifically prohibited. Any reference in the attached permit application forms to dimensions differing from those indicated on the attached workplan drawing dated 12/29/08 are hereby considered null and void.
- 4) The depth of excavation shall not exceed the depth of connecting waters.
- 5) The maintenance excavation of the channels authorized by this permit shall have a maximum bottom width of 25 feet, and a maximum top width of 35 feet.
- 6) No maintenance excavation shall take place within areas that are at the time of excavation within +/- 0.2 feet of the authorized depth of excavation.
- 7) In order to protect juvenile shrimp/finfish/shrimp and finfish populations, no excavation or filling shall be permitted between February 15 and September 30 of any year without the prior approval of the Division of Coastal Management, in consultation with the Wildlife Resources Commission.
- 8) No Coastal Wetlands shall be excavated or filled.
- 9) The temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands are not authorized.
- 10) No excavation shall take place at any time outside of the alignment area indicated on the attached workplan drawing without additional authorization.
- 11) In accordance with T15A:07H.0208 of the Rules of the Coastal Resources Commission, no new dredging or excavation within *designated primary nursery areas* shall be

permitted. New dredging in any manner, including "kicking" with boat propellers is not authorized.

Spoil Disposal

- 12) All excavated materials shall be confined above the normal water level and landward of regularly or irregularly flooded Coastal Wetlands behind adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.
- 13) The disposal area effluent shall be contained by pipe, trough, or similar device to a point at or beyond the normal water level to prevent gully erosion and unnecessary siltation.
- 14) The terminal end of the pipeline shall be positioned at or greater than 50 feet from any part of the dike and a maximum distance from spillways to allow settlement of suspended sediments.
- 15) A water control structure shall be installed at the intake end of the effluent pipe to assure compliance with water quality standards.
- 16) The disposal area shall be properly graded and provided a ground cover sufficient to restrain erosion within 30 working days of project completion.
- 17) The spoil disposal area shall be inspected and approved by a representative of the Division of Coastal Management prior to the commencement of any dredging activities.
- 18) No spoil material is to be placed within 30 feet of the normal water line.

Sedimentation and Erosion Control

NOTE:

An Erosion and Sedimentation Control Plan may be required for this project. If required, this plan must be filed at least thirty (30) days prior to the beginning of any land disturbing activity. Submit this plan to the Department of Environment and Natural Resources, Land Quality Section, 943 Washington Square Mall, Washington, NC 27889.

General

- 19) No attempt shall be made by the permittee to prevent the free and full use by the public of all navigable waters at or adjacent to the authorized work, except to the extent necessary to ensure safe navigation by the general public and for the safe performance of the work.

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required, including but not limited to a permit from the U.S. Army Corps of Engineers.

NOTE: This permit shall not be assigned, transferred, sold, or otherwise disposed of to a third party without the written approval of the Division of Coastal Management.

NOTE: Future development of the permittee's property may require a modification of this permit. Contact a representative of the Division at (252) 264-3901 prior to the commencement of any such activity for this determination. The permittee is further advised that many non-water dependent activities are not authorized within 30 feet of the normal water level.

NOTE: The N.C. Division of Water Quality has assigned the proposed project DWQ Project No. 071809.

NOTE: The U.S. Army Corps of Engineers has assigned the proposed project COE Action Id. No. SAW-200703780.